of these quasi-judicial proceedings in order to safeguard our traditional concepts of due process.

Petitioner is here urging the adoption of a bar against multiple actions for the same cause in administrative proceedings in the same manner that *res judicata* accomplishes finality in judicial proceedings.

Our Courts have heretofore approached this problem by attempting to forge the judical tool of *res judicata* into this new and growing area of law. *Res judicata*, however, is not applicable to, and cannot be applied in administrative proceedings.

The principle of *res judicata* was created to function in our judicial proceedings consisting of single issue adjudications. By definition, we do not have single issue adjudication, nor adjudication itself, in administrative proceedings. *Res judicata* is therefore not present, nor can it be applied, in administrative law.

Petitioner urges the adoption of a principle of *res administrata* to conform to the realities of the quasi-judicial functioning of administrative law, wherein there is one executive branch of government regulating (administrating) a *res* or subject matter.

In the instant matter, one executive agency instituted proceedings in regulation of petitioner's product and advertising material. This proceeding culminated in an agreement whereby prohibitory and permissive advertising claims are spelled out. Thereafter, a second action (the instant action) was instituted by another executive agency attacking the petitioner's advertising claims and the agreement theretofore executed. The instant action constitutes a collateral attack upon the prior agreement and proceeding.

Petitioner urges that this second action be barred. Petitioner submits that there is privity among the execu-

tive administrative agencies so that we have the same party in both proceedings performing regulatory power over the same subject matter.

When the executive branch of government executed the agreement in regulation of the advertising claims, it is chargeable with knowledge of all federal laws of the United States, affecting the legality of said advertising claims.*

The government cannot thereafter, by means of a second action, collaterally attack the legality of its prior agreement or regulatory proceeding.

This ruling does not involve, as stated by the Court of Appeals, a requirement that one agency enforce the laws of another agency. Rather, it charges the first executive agency with knowledge of all the laws of the United States so as to create a bar against a second proceeding attacking, as illegal, the regulation or determination arrived at in the first proceeding.

The need for administrative law and administrative agencies is admitted, but there arises a concomitant need for the creation of protective rules of law to safeguard our traditional concepts of due process.

Once again we must turn to the creative living organism of the law to answer the felt needs of our times.

B. Privilege Against Self-Incrimination

Petitioner urges the adoption of an exception to the rule of law withholding from a corporation the Constitutional privilege against self-incrimination.

A corporation is deemed to be an incorporeal legal entity, separate, distinct and apart from its members. Thus,

* This is a no greater burden than that which is placed upon all persons in our Courts. Ignorance of the law is no defense.

the privilege against self-incrimination, designed to protect natural persons from the threat of testimonial compulsion, imprisonment or capital punishment, has been properly withheld from these incorporeal separate, legal entities.

In the instant case, however, the Federal Food, Drug and Cosmetic Act does not treat the corporation as an entity, separate, distinct and apart from its members, but instead, equates the corporate identity with that of a broad class of its members.

As interpreted in *U. S.* v. *Dotterweich, supra,* the Act imposes criminal liability not only upon the corporation, but automatically upon a broad class of individuals who have a responsible share in the furtherance of the transaction complained of. The Act visits criminal liability for corporate wrongs upon this class of individuals, irrespective of intent, participation or knowledge of the violative conduct.

The Federal Food, Drug and Cosmetic Act, as interpreted by this Court, has shattered the corporate entity for the imposition of criminal liability.

The Court, in *U. S.* v. *Dotterweich, supra,* recognized that it was creating a class of individuals upon whom criminal liability automatically falls, when it stated:

> "It would be too treacherous to define or even to indicate by way of illustration the class of employees which stands in such a responsible relation. To attempt a formula embracing the variety of conduct whereby persons may responsibly contribute in furthering a transaction forbidden by an Act of Congress, to wit, to send illicit goods across state lines, would be mischievous futility."

Petitioner respectfully submits that once having pierced the corporate veil to impose criminal liability, the veil remains open to permit the assertion of our Constitutional protection against self-incrimination. The very reason underlying the rule of law denying the Constitutional privilege to corporations, does not appear in the instant case, or any other case under the Federal Food, Drug and Cosmetic Act. The very policies underlying the Constitutional privilege would be frustrated, should the privilege be denied the corporation under the special circumstances herein presented.

This case, therefore, apart from important Constitutional questions, raises a question of recurrent significance in the enforcement and administration of the Federal Food, Drug and Cosmetic Act.

CONCLUSION

For the reasons set forth above, this petition for writ of certiorari should be granted.

Respectfully submitted,

MILTON A. BASS,
SOLOMON H. FRIEND,
Counsel for Petitioner.

May 15th, 1959